

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONTIE S. MITCHELL,

Plaintiff,

v.

6:17-cv-06673-MAT
ORDER

PAUL CHAPPIUS, JR., et al.,

Defendants.

Pro se plaintiff Dontie Mitchell, a prisoner currently confined at the Great Meadow Correctional Facility, originally filed an action in the United States District Court for the Northern District of New York (“Northern District”) asserting claims under 42 U.S.C. § 1983. Upon initial screening, the Northern District severed and transferred to this Court a number of claims arising from Plaintiff’s confinement at a correctional facility located in the Western District of New York. Docket Item 13.

Currently before the Court is Plaintiff’s motion to transfer this action back to the Northern District of New York. Docket Item 18. In the alternative, Plaintiff requests a stay of the case pending a decision on his “motion to recall the mandate in the Second Circuit . . . and motion for reconsideration/reconsideration *en banc*” of the Second Circuit’s order dismissing his appeal of the Northern District’s transfer order. See *Mitchell v. Cuomo*, No. 917CV0892TJMDJS, 2017 WL 8780773, at *2 (N.D.N.Y. Dec. 6, 2017) (denying motion for reconsideration).

The Second Circuit denied his motion “for a recall of the mandate and for leave to file a motion for reconsideration” on October 15, 2018. See Docket Item 156 in

Mitchell v. Cuomo, No. 18-89 (2d Cir. 2018). Therefore, Plaintiff's request for a stay pending this decision is now moot.

Furthermore, the Court finds that the Northern District's decision, pursuant to Fed. R. Civ. P. 21 and 28 U.S.C. § 1404(a), to sever and transfer the claims arising in the Western District of New York was within the sound discretion of that court. *E.g.*, *Cain v. NY State Bd. of Elections*, 630 F. Supp. 221, 225-26 (E.D.N.Y. 1986) (citing *Garber v. Randall*, 477 F.2d 711 (2d Cir. 1973); *A. Olinick & Sons v. Dempster Bros., Inc.*, 365 F.2d 439, 444 (2d Cir. 1966)). Moreover, there is no basis to return this action to the Northern District, which found the instant claims to be "separate and distinct from the claims arising out of alleged wrongdoing that arose" in the Northern District. Accordingly, Plaintiff's motion to transfer is denied as without merit, and his request to stay this action is denied as moot.

SO ORDERED.

Dated: December 20, 2018
Rochester, New York

s/ Michael A. Telesca
MICHAEL A. TELESCA
UNITED STATES DISTRICT JUDGE